

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 2, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Towe

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 22
	HB 24
	HB 35
	HB 50
Executive Action:	HB 22
	HB 24
	HB 35
	HB 50
	HB 127

HEARING ON HB 35

Opening Statement by Sponsor:

Representative Dave Brown, District 72, is carrying SB 35 on behalf of the Department of Livestock. Rep. Brown said SB 35

repeals statutes 81-9-424 and 81-9-423. (Exhibit #1 and Exhibit #2) The Department is asking for the repeal because the statutes are unenforceable and unconstitutional.

Proponents' Testimony:

Cork Mortensen, Executive Secretary to the Board of Livestock, read from prepared testimony. (Exhibit #3)

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Blaylock asked Mr. Mortensen why the statutes were adopted. Mr. Mortensen said the statutes originated in 1923.

Closing by Sponsor:

Representative Brown told the Committee Senator Lynch may carry HB 35 in the Senate.

EXECUTIVE ACTION ON HB 35

Motion/Vote:

Senator Blaylock moved HB 35 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 24

Opening Statement by Sponsor:

Representative Jim Rice, District 43, told the Committee HB 24 would revoke Montana's copyright claim for the Montana Code Annotated. Rep. Rice said sixteen years ago the legislature began to codify laws, which became the Montana Code Annotated. It was discovered that the copyrights for Montanas laws were held by a corporation in Minneapolis. Montana paid a sum of \$25,000 to the Minneapolis Corporation for the purchase of the copyrights to the Montana Code Annotated. Since that time, there have been a series of court decisions which have restricted state rights to copyright their laws. Rep. Rice said HB 24 is sponsored by the legislative council. HB 24 does two things. It gives up the copyright that Montana has to the codes and says no one will have the copyrights. It designates the Montana Code Annotated as the official version to be used for legal purposes. People will purchase the codes from the state, but Montana will no longer have the copyright to them.

Proponents' Testimony:

Charles Walk, Montana Newspaper Association, supports HB 24. Mr.

Walk said HB 24 is a good piece of legislation that would take care of current and future problems. Mr. Walk feels the clarification in the bill, as to who owns the code, is a significant part of HB 24.

Greg Petesch, Code Commissioner, told the Committee that the legislative council sponsored a bill last session, which was tabled, that would have clarified the procedure to be followed in giving permission to use codified material. The bill was opposed by several individuals on the basis that they did not feel that the state code should be copyrighted. Mr. Petesch said he worked with the opponents of that bill to come up with HB 24. Mr. Petesch said if someone wanted to compile an unauthorized version of the codes there would be no objection. A provision in HB 24 maintains that Montana Code Annotated would be the official version of codes to be used in public documents. That provision would provide protection for the state.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Blaylock asked Greg Petesch if anyone could copyright the codes. Mr. Petesch said yes. Mr. Petesch said it would be difficult to produce a more timely and cheaper version of the codes that are presently produced by the State of Montana.

Closing by Sponsor:

Representative Rice closed.

HEARING ON HB 50

Opening Statement by Sponsor:

Representative Fagg, District 89, said the Montana Retailers Association approached him about sponsoring HB 50. Rep. Fagg told the Committee why HB 50 was being introduced. Last session Senator Van Valkenburg introduced a Criminal Procedure Bill that the county attorneys, defense attorneys, and judges agreed upon. Part of the bill took out the Merchant Detention Statute. There were two statutes that were deleted, with the introduction of the Criminal Procedure Bill, regarding shoplifting and detaining someone suspected of shoplifting. Rep. Fagg said for the last two years, retailers have been concerned about not having the ability to detain someone who is suspected of shoplifting. Retailers believe detaining someone under present law could open them up to civil liability, so they requested the law that was deleted in the previous legislative session be reintroduced. Rep. Fagg said the wording would be the same, but it would be combined in one section. Rep. Fagg said the main concern of the

opponents would be the protection of the customers.

Proponents' Testimony:

Charles Brook, Montana Retailers Association, said the section of the code that was eliminated in the last session was on the books since the early 1970's. Mr. Brook said the problem with section 46-6-501, part 2, is that a person must immediately notify a peace officer. There are many times when it is not in the best interest of the person who is suspected of shoplifting, to immediately call a peace officer. For instance, a senior citizen who may be disoriented, or a young child. Mr. Brooke said according to the code, if a peace officer is not immediately notified, the retailer could be open to a lawsuit. Mr. Brooke said shoplifting is a nationwide crime. Nationwide, merchants are losing an estimated \$20 billion a year in merchandise. Montana loses an estimated \$40 million in merchandise a year. Mr. Brooke told the Committee that shoplifting increases the price on merchandise. The Montana Retailers Association is interested in this section of the code being restored because it protects the right of individuals and the rights of the merchant to detain.

David Owen, Montana Chamber of Commerce, said following someone out of a store that is suspected of shoplifting, is a burden to store owners and staff. Mr. Owen support HB 50, but feels there should be reasonable restrictions placed on store owners regarding the detainment of an individual.

Bill Stevens, Montana Food Distributors Association, supports HB 50. Mr. Stevens said retail grocers have quit detaining shoplifters for fear of being sued. Mr. Stevens urged a DO PASS on HB 50.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, said they stand in friendly opposition to HB 50. HB 50 has many protections in the bill. Mr. Hill said his understanding was that the deletion of the language was intentional because the revisors of the code did not see a reason why merchants needed additional power to stop and detain people. Mr. Hill said the concern of shopkeepers, who may not want to immediately call police, is a genuine concern. Mr. Hill pointed out that in terms of the fear of liability, HB 50 may expose merchants to an additional degree of liability, page 2, line 10 through 13. HB 50 treats merchants differently than all other people in terms of detention and search of suspected shoplifters. The concern of the Montana Trial Lawyers Association is that HB 50 may send wrong messages to merchants, by giving them a false sense of immunity. Mr. Hill pointed out good provisions in HB 50. Page 1, line 10, is a good provision because the merchant has to have reason to believe a person is shoplifting. Page 2, lines 4 and 5, requires that detention has to be done in a reasonable manner and time. The Montana Trial Lawyers Association believe those are basic

principles of current law.

Questions From Committee Members and Responses:

Senator Doherty asked Rep. Fagg about page 2, line 7 through 9. Rep. Fagg said a merchant would not be able to search inside someone's shirt or down their pants.

Senator Blaylock asked Mr. Brook if HB 50 would cause a decrease in shoplifting. Mr. Brook said with the passage of HB 50 there would be a decline in shoplifting. Mr. Brook told the Committee that making sure judges follow the codes and getting substantial penalties for shoplifters would be the greatest deterrent to shoplifting.

Closing by Sponsor:

Rep. Fagg said the original law was on the books for almost 20 years and it seemed to worked very well. Shoplifting is occurring in Montana and is a problem for the merchants as well as customers because prices increase. The policy behind HB 50 is a good one. HB 50 allows a merchant to detain a person suspected of shoplifting inside the store. Rep. Fagg said the protections that Russell Hill touched on are significant for HB 50. The two main protections are on page 2 of HB 50. Line 4 says, "and anything done under the section must be done in a reasonable manner and time." The most significant protection is on line 9 through 12. It says "after the purpose of the stop has been accomplished or 30 minutes has elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is stopped by the police." The merchant would have 30 minutes at the most to get the police there if they think someone has shoplifted. Rep. Fagg said presently merchants immediately call the police which could be detrimental to a person who has not really shoplifted. Rep. Fagg said that is a waste of resources for the police and an embarrassment for the person who had not actually shoplifted. HB 50 is to putting the law back on the books allowing merchants to detain and search someone in a reasonable time and manner. If the person shoplifted police would be called, if the person has not shoplifted they would be released. Rep. Fagg said it would be in the publics best interest for merchants to be able to make those stops. The House Judiciary Committee amended HB 50 to make the bill more reasonable. A merchant was defined on page one of HB 50. The language on page 2, line 17, "malicious or actual" was deleted because there was concern that a jury would be confused by the language. Rep. Fagg asked for DO PASS recommendation for HB 50.

EXECUTIVE ACTION ON HB 24

Motion/Vote:

Senator Blaylock moved HB 24 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

HEARING ON HB 22**Opening Statement by Sponsor:**

Representative Red Menahan, District 67, said HB 22 is on the Uniform Code Commission and the appointments to that code.

Proponents' Testimony:

Greg Petesch, Director of Legal Services for Legislative Council, said HB 22 arose because last session the Governors office decided, in order to reduce the appropriations for that office, to remove the funding for the Uniform Law Commission from their budget. The Governors Office was not interested in administering funding, so the appropriation bill was amended to place funding for the Uniform Law Commissioner in Legislative Council. Mr. Petesch said the council was concerned that people were being appointed by the Governor, but approving authority for the funding was done by a legislative agency. Mr. Petesch told the Committee it was discussed, as the budget was being prepared for this session, whether the Governors Office would take back the funding for the commission. The Governor had no interest in doing that, but would not oppose a transfer of appointment authority to a budgetary approving authority. Mr. Petesch said Montana is the leading state in the nation in adopting uniform laws. This is not an attempt by the Legislative Council to take power away from the Governor, but an attempt to resolve a problem of separation of powers that arose last session. Mr. Petesch said the Uniform Law Commissioners are aware of HB 22 and had some concern as to whether being appointed by the Legislative Council would politicize appointments. Mr. Petesch said the Legislative Council is required to be a nonpartisan body. HB 22 would provide an institutional link between Montana's commissioners and the legislature. HB 22 attempts to resolve the separation of power problem so the Legislative Council does not have final approval authority.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Bartlett asked Mr. Petesch about page 2. Mr. Petesch said Commissioners have never sought reimbursement, except for their expenses.

Senator Crippen asked Mr. Petesch asked if Montana had more uniform laws than any other state. Mr. Petesch said yes.

Closing by Sponsor:

Representative Menahan said HB 22 is a simple uniform bill that would save Montana money. Rep. Menahan asked for support in HB

22.

EXECUTIVE ACTION ON HB 22

Motion/Vote:

Senator Blaylock moved HB 22 BE CONCURRED IN. The motion CARRIED with Senator Crippen voting NO.

EXECUTIVE ACTION ON HB 50

Motion:

Senator Blaylock moved HB 50 BE CONCURRED IN.

Discussion:

Senator Halligan said merchants do not stop a person suspected of shoplifting inside a store because they have yet to purchase the item. It is prima facie evidence of concealment if a person is concealing merchandise upon a person, in a container, or removing merchandise from full view upon the premises. Senator Halligan said there would be plenty of opportunity for liability on part a store owner. Store owners would have to have a high standard to make sure they are acting in a reasonable manner when someone is inside the store and suspected of shoplifting.

Vote:

The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 127

Motion/Vote:

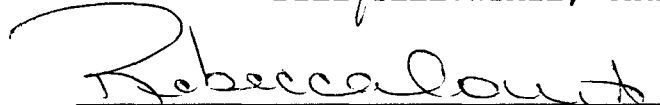
Senator Halligan moved HB 127 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 10:57 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-2-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 22 (first reading copy -- blue), respectfully report that House Bill No. 22 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 24 (first reading copy -- blue), respectfully report that House Bill No. 24 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 35 (first reading copy -- blue), respectfully report that House Bill No. 35 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 50 (first reading copy -- blue), respectfully report that House Bill No. 50 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 127 (first reading copy -- blue), respectfully report that House Bill No. 127 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

81-9-423. Mutilation or concealment of hides a felony. Every person who knowingly mutilates, destroys, or conceals an animal hide for the purpose of removing evidence of ownership of such hide or the animal from which the hide was removed is guilty of a felony and punishable upon conviction thereof by a fine of not less than \$500 or more than \$5,000 or imprisonment in the state prison for not less than 1 year or more than 10 years, or both.

History: Ap.p. Sec. 1, Ch. 76, L. 1923; re-en. Sec. 3350.4, R.C.M. 1935; amd. Sec. 46, Ch. 12, L. 1977; Sec. 46-1103, R.C.M. 1947; Ap.p. Sec. 3, Ch. 76, L. 1923; re-en. Sec. 3350.6, R.C.M. 1935; Sec. 46-1105, R.C.M. 1947; R.C.M. 1947, 46-1103, 46-1105; amd. Sec. 3, Ch. 236, L. 1979.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 3-2-93

BILL NO. HB35

H B 35

...cy of pleading and proof in criminal prosecution for the violation of the provisions of 81-9-423 it is not to allege in the complaint or information the ownership animal from which the hide was removed, but it is the complaint or information that the owner of the hide which the hide was removed is unknown and the hide property of the defendant.

78, L. 1923; re-en. Sec. 3350.5, R.C.M. 1935; amd. Sec. 47, Ch. 104; amd. Sec. 11, Ch. 14, L. 1979.

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SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 3-2-93

BILL NO. HB 35

DATE 3-2-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 22 (Minnahan) HB 24 (Rice)
HB 35 - Brown HB 50 - Fagg

Name

Representing

Bill
No.

Check One
Support Oppose

Bill Stevens	MT Food Dist Assoc	HB-50	X	
Shankle, R. Brook	MT - Rd. N. L. HSSAC	HB 50	X	
Clark Kent	MT Newspaper	HB 24	X	
David Owen	MT chamber of commerce	HB 50	✓	
Russell B Hill	MT Trial Lawyers	HB 50		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY